



February 26, 2025
2025 Special 301 Review
Docket No. USTR-2024-0023

Post-Hearing Submission of the Intellectual Property Owners Association (IPO)

Special 301 Subcommittee Members:

Intellectual Property Owners Association (IPO) appreciated the opportunity to testify on February 19th as part of the 2025 Special 301 Review and thanks you for the ability to provide this post-hearing submission. This submission provides supplemental information in response to two of the questions posed during IPO's testimony.

Question Regarding Deficiencies in Enforcement Against Piracy in Argentina

Background: In its written comments, IPO raised the issue of deficiencies in copyright and trademark protection in Argentina, noting that the level of enforcement against piracy of protected goods (copyright and/or trademark) is very weak, both in local courts and in terms of preventive measures taken by enforcement officers. At the hearing, IPO was asked for more specifics pertaining to this issue.

Supplemental response: IPO understands that, although certain enforcement efforts countering piracy of protected goods have occurred in Argentina, they have been undercut by criminal court precedents and Customs practices, eroding their effectiveness over time. More specifically:

- There are some precedents from criminal courts that cause criminal actions to be dismissed on the basis that the product is of such low quality or low price that it could not cause the consumer to believe the product is an original one;
- Only a low percentage of imports coming through Customs are inspected; and
- When police or other enforcement agencies seize counterfeits and prosecution occurs, the fines can be too small to have a deterrent effect.

Improvement in these areas is needed in order to ensure that the IP rights of innovators and creators are respected and to protect the public from counterfeit and pirated goods.

Question Regarding Use of Post-Filing Data to Satisfy Inventive Step Requirements in China

Background: In its written comments, IPO positively noted that China changed its patent examination guidelines to allow patent applicants to file additional biological data after filing their applications, but also discussed concerns that CNIPA appears to be imposing new and unfair or inappropriate limitations and interpretations of the new amendment on the use of post-filing data to satisfy inventive step requirements. At the hearing, IPO was asked for relevant examples.

Supplemental response: IPO understands that CNIPA examiners have asserted that post-filing data cannot be used to satisfy inventive step requirements for various reasons, but that their assertions, while stating proper grounds, have sometimes failed to be supported by evidence and/or lacked proper explanation. This issue has occurred not only in cases involving biological data, but also with respect to those involving other post-filing data, including computer data. Requiring the issuance of more detailed statements by examiners citing evidence and/or explaining specific reasoning to support their grounds for rejection of post-filing data would help ensure a more predictable and transparent system.

Conclusion

Thank you, again, for this opportunity to provide supplemental information and for your work ensuring U.S. trading partners provide adequate and effective protection of IP rights and fair and equitable market access to companies who rely on IP protection. IPO looks forward to the release of the 2025 Special 301 Report later this year.